

APPENDIX ROW

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APPENDIX RIGHTS-OF-WAY, CONDUITS AND POLES (ROW)**1. INTRODUCTION**

- 1.1 This Appendix sets forth the terms and conditions for Rights of Way (ROW), Conduits and Poles provided by the applicable SBC Communications Inc. (SBC) owned Incumbent Local Exchange Carrier (ILEC) and CLEC.
- 1.2 **SBC Communications Inc. (SBC)** means the holding company which directly or indirectly owns Wisconsin Bell, Inc. d/b/a **SBC WISCONSIN**.
- 1.3 As used herein, **SBC WISCONSIN** is an ILEC doing business in Wisconsin.
- 1.4 The prices at which **SBC WISCONSIN** agrees to provide CLEC with ROW are contained in the applicable Appendix Pricing and/or the applicable Commission ordered tariff where stated.

2. STRUCTURE AVAILABILITY

- 2.1 **SBC WISCONSIN** shall make available, to the extent it may lawfully do so, access to poles, ducts, conduits and Rights-of-way along **SBC WISCONSIN**'s distribution network that are owned or controlled by **SBC WISCONSIN** (individually and collectively, "Structure") for the placement of CLEC's wires, cables and related facilities (individually and collectively, "Attachments").
 - 2.1.1 "Rights-of-way" means (i) a legal interest of **SBC WISCONSIN** in property of others, such as an easement or license, suitable for use for communications distribution facilities or (ii) **SBC WISCONSIN**'s owned or leased property if such property is used for communications distribution facilities; provided, however, it does not generally include controlled environment vaults, remote equipment buildings, huts or enclosures, cross-connect cabinets, panels and boxes, equipment closets or enclosures in buildings or any like or similar equipment enclosures or locations, or the ducts or conduit connecting any of the foregoing to manholes or conduit runs between manholes.
 - 2.1.2 The availability of **SBC WISCONSIN** Structure for CLEC's Attachments is subject to and dependent upon all rights, privileges, franchises or authorities granted by governmental entities with jurisdiction, existing and future agreements with other persons not inconsistent with Section 15, all interests in property granted by persons or entities public or private, and Applicable Law, and all terms, conditions and limitations of any or all of the foregoing, by which **SBC WISCONSIN** owns and controls Structure or interests therein.
- 2.2 **SBC WISCONSIN** will not make Structure available:
 - 2.2.1 Where, after taking all reasonable steps to accommodate such request, there is Insufficient Capacity to accommodate the requested Attachment, or
 - 2.2.2 An Attachment cannot be accommodated based upon nondiscriminatorily applied safety, reliability or engineering principles.
 - 2.2.3 For purposes of this Appendix, "Insufficient Capacity" means the lack of existing available space on or in Structure and the inability to create the necessary space by taking all reasonable steps to do so. Before denying a request for access based upon Insufficient Capacity, **SBC WISCONSIN** will, in good faith explore potential accommodations with CLEC. If **SBC WISCONSIN** denies a request by CLEC for access to its Structure for Insufficient Capacity, safety, reliability or engineering reasons, **SBC WISCONSIN** will

provide CLEC a detailed, written reason for such denial as soon as practicable but, in any event, within forty-five (45) calendar days of the date of such request.

2.3 **Franchises, Permits and Consents**

2.3.1 CLEC shall be solely responsible to secure any necessary franchises, permits or consents from federal, state, county or municipal authorities and from the owners of private property, to construct and operate its Attachments at the location of the **SBC WISCONSIN** Structure it uses. CLEC shall indemnify **SBC WISCONSIN** against loss directly resulting from any actual lack of CLEC's lawful authority to occupy such Rights-of-way and construct its Attachments therein.

2.4 **Access and Modifications**

2.4.1 Where necessary to accommodate a request for access of CLEC, and provided **SBC WISCONSIN** has not denied access as described in Section 2, or because **SBC WISCONSIN** will, as set forth below, modify its Structure in order to accommodate the Attachments of CLEC. Upon request, **SBC WISCONSIN** may permit CLEC to conduct Field Survey Work and Make Ready Work itself or through **SBC WISCONSIN** approved contractors in circumstances where **SBC WISCONSIN** is unable to complete such work in a reasonable time frame. (For purposes of this Agreement, a "modification" shall mean any action that either adds future capacity to, or increases the existing capacity of, a given facility. By way of example, adding a bracket to a pole that is immediately utilized or adding inner duct to an existing duct does not qualify as a "modification," while adding taller poles, adding new ducts between existing manholes and rebuilding manholes to accommodate additional cables would qualify as a "modification.")

2.5 Before commencing the work necessary to provide such additional capacity, **SBC WISCONSIN** will notify all other parties having Attachments on or in the Structure of the proposed modification to the Structure. Where possible, **SBC WISCONSIN** shall include in a modification to accommodate CLEC's Attachment(s) those modifications required to accommodate other attaching parties, including **SBC WISCONSIN**, that desire to modify their Attachments.

2.6 If CLEC request access to an **SBC WISCONSIN** Right-of-way where **SBC WISCONSIN** has no existing Structure, **SBC WISCONSIN** shall not be required to construct new poles, conduits or ducts, or to bury cable for CLEC but will be required to make the Right-of-way available to CLEC to construct its own poles, conduits or ducts or to bury its own cable; provided, however, if **SBC WISCONSIN** desires to extend its own Attachments, **SBC WISCONSIN** will construct Structure to accommodate CLEC's Attachments.

2.7 The costs of modifying a Structure to accommodate CLEC's request, an existing or prospective attaching party's request, or the needs of **SBC WISCONSIN**, shall be borne by the party requesting such modification, except that if other parties obtain access to the Structure as a result of the modification, such parties shall share in the cost of such modification proportionately with the party initiating the modification. A party, including **SBC WISCONSIN**, with a pre-existing Attachment to the Structure to be modified to accommodate CLEC shall be deemed to directly benefit from the modification if, after receiving notification of the modification, it adds to or modifies its Attachment. If a party, including **SBC WISCONSIN**, uses the modification to bring its Structure or Attachment into compliance with applicable safety or other requirements, it shall be considered as sharing in the modification and shall share the costs of the modification attributable to its upgrade. Notwithstanding the foregoing, an attaching party, including **SBC WISCONSIN**, with a pre-existing Attachment to the Structure shall not be required to bear any of the costs of rearranging or replacing

its Attachment if such rearrangement or replacement is necessitated solely as a result of an additional Attachment or the modification of an existing Attachment sought by another attaching party, including CLEC. If an attaching party, including SBC WISCONSIN, makes an Attachment to the Structure after the completion of the modification, such party shall share proportionately in the cost of the modification if such modification rendered the added attachment possible.

- 2.8 All modifications to SBC WISCONSIN's Structure will be owned by SBC WISCONSIN. CLEC and other parties, including SBC WISCONSIN, who contributed to the cost of a modification, may recover their proportionate share of the depreciated value of such modifications from parties subsequently seeking Attachment to the modified structure.

3. **INSTALLATION AND MAINTENANCE RESPONSIBILITIES**

- 3.1 CLEC shall, at its own expense, install and maintain its Attachments in a safe condition and in through repair so as not to conflict with the use of the Structure by SBC WISCONSIN or by other attaching parties. Work performed by CLEC on, in or about SBC WISCONSIN's Structures shall be performed by authorized contractors. "Authorized contractors" are contractors selected by CLEC who may, subject to CLEC's direction and control, perform facilities modification or make-ready work which would ordinarily be performed by SBC WISCONSIN or persons acting on SBC WISCONSIN's behalf. As used in this Appendix, the term "authorized contractor" does not refer to contractors performing routine installation, maintenance, or repair work on CLEC's behalf or other contractors who may be selected by CLEC to perform work on CLEC's behalf without SBC WISCONSIN's approval. More specifically, the term "authorized contractor" refers only to those contractors included on a list of contractors mutually approved by CLEC and SBC WISCONSIN to perform one or more of the following tasks within a specified SBC WISCONSIN construction district: (a) installation of those sections of CLEC's ducts or facilities which connect to SBC WISCONSIN conduit system; (b) installation of inner duct; (c) excavation work in connection with the removal of retired or inactive (dead) cables; or (d) make-ready work. A person or entity approved as an authorized contractor is only an authorized contractor with respect to those tasks for which such person or entity has been approved by both Parties and is an authorized contractor only in those SBC WISCONSIN construction districts agreed to by both Parties. Designation of an authorized contractor for a specific category of tasks shall not be deemed to be the designation of such person or entity as an authorized contractor for other purposes, nor shall approval of an authorized contractor by one SBC WISCONSIN construction district constitute approval of such authorized contractor for the area served by a different SBC WISCONSIN construction district; provided, however, that if a specific construction job extends beyond the boundaries of a single construction district, an authorized contractor shall, for the purposes of that job, be deemed to have been approved by all SBC WISCONSIN construction districts in which the work is to be performed. SBC WISCONSIN will specify the location in or on the Structure where CLEC's Attachment shall be placed, which location shall be in accordance with the National Electrical Safety Code Standards and designated in a nondiscriminatory manner. CLEC shall construct each Attachment in conformance with the permit issued by SBC WISCONSIN for such Attachment. Other than routine maintenance and service wire Attachments, CLEC shall not modify, supplement or rearrange any Attachment without first obtaining a permit therefore. CLEC shall provide SBC WISCONSIN with notice before entering or climbing any Structure for construction or maintenance purposes. SBC WISCONSIN and CLEC further agree that CLEC shall pay to SBC WISCONSIN a penalty of \$5000.00 for each unauthorized entry into the conduit system.

- 3.2 Installation and Maintenance Standards

- 3.2.1 CLEC's Attachments shall be installed and maintained in accordance with the rules, requirements and specifications of the National Electrical Code, National Electrical Safety Code, Telcordia Construction Practices, the FCC, the Commission, the Occupational Safety & Health Act and the valid and lawful rules, requirements and specifications of any other governing authority having jurisdiction over the subject matter.

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5. ACCESS REQUESTS

- 5.1 Any request by CLEC for access to SBC WISCONSIN's Structure shall be in writing and submitted to SBC WISCONSIN's Structure Access Coordinator. SBC WISCONSIN may prescribe a reasonable process for orderly administration of such requests. Each CLEC's Attachment to SBC WISCONSIN's Structure shall be pursuant to a permit issued by SBC WISCONSIN for each request for access. The Structure Access Coordinator shall be responsible for processing requests for access to SBC WISCONSIN's Structure, administration of the process of delivery of access to SBC WISCONSIN's Structure and for all other matters relating to access to SBC WISCONSIN's Structure. In the event of disputes that cannot be resolved with the Structure Access Coordinator, either Party may invoke the Dispute Resolution procedures in the General Terms and Conditions. CLEC shall provide SBC WISCONSIN with notice before entering any SBC WISCONSIN Structure.

6. UNUSED SPACE

- 6.1 Except for maintenance ducts as provided in Section 7 and ducts required to be reserved for use by municipalities, all poles and conduit systems containing useable but unused space on Structure owned and controlled by SBC WISCONSIN shall be available for the Attachments of CLEC, SBC WISCONSIN or other providers of Telecommunications Services, cable television systems and other persons that are permitted by Applicable Law to attach. CLEC may not reserve space on SBC WISCONSIN Structure for its future needs. SBC WISCONSIN shall not reserve space on SBC WISCONSIN Structure for the future need of SBC WISCONSIN nor permit any other person to reserve such space. Notwithstanding the foregoing, CLEC may provide SBC WISCONSIN with a two (2)-year rolling forecast of its growth requirements for Structure that will be reviewed jointly on an annual basis.

7. MAINTENANCE DUCTS

- 7.1 If currently available, one duct in each conduit section shall be kept vacant as maintenance ducts. If not currently available and additional ducts are added, maintenance ducts will be established as part of the modification. Maintenance ducts shall be made available to CLEC for maintenance purposes if it has a corresponding Attachment.

8. APPLICABILITY

- 8.1 The provisions of this Appendix shall apply to the SBC WISCONSIN Structure now occupied by CLEC.

9. OTHER ARRANGEMENTS

- 9.1 CLEC's use of SBC WISCONSIN Structure is subject to any valid, lawful and nondiscriminatory arrangements SBC WISCONSIN may now or hereafter have with others pertaining to the Structure.
- 9.2 Cost of Certain Modifications

- 9.2.1 If SBC WISCONSIN is required by a governmental entity, court or Commission to move, replace or change the location, alignment or grade of its conduits or poles, each Party shall bear its own expenses of relocating its own equipment and facilities. If a move of CLEC's Attachment is required by SBC WISCONSIN or another attaching party, CLEC shall move its Attachment, at the expense of the party requesting such move, within thirty (30) days after notification of the required move or as specified by the governmental entity, court or commission. If CLEC fails to move its Attachment with the foregoing period, CLEC authorizes SBC WISCONSIN to move such Attachment at CLEC's expense.

10. MAPS AND RECORDS

- 10.1 SBC WISCONSIN will provide CLEC, at CLEC's request and expense, with access to maps and records relating to its Structure within the time frame agreed upon by the Parties; provided that SBC WISCONSIN may redact any Proprietary Information (of SBC WISCONSIN or third parties) contained or reflected in any such maps and records before providing access to such information to CLEC. SBC WISCONSIN does not warrant the accuracy or completeness of information on any maps or records. Maps and records are provided solely for the use by CLEC and such materials may not be resold, licensed or distributed to any other person.

11. OCCUPANCY PERMIT

- 11.1 CLEC occupancy of Structure shall be pursuant to a permit issued by SBC WISCONSIN for each requested Attachment. Any such permit shall terminate:
- 11.1.1 If CLEC's franchise, consent or other authorization from federal, state, county or municipal entities or private property owners is terminated.
 - 11.1.2 If CLEC has not placed and put into service its Attachments within one year from the date SBC WISCONSIN has notified CLEC that such Structure is available for CLEC's Attachments.
 - 11.1.3 If CLEC ceases to use such Attachments for a period of one hundred-eighty (180) days.
 - 11.1.4 If CLEC fails to comply with a material term or condition of this Appendix and does not correct such noncompliance within sixty (60) days after receipt of notice thereof from SBC WISCONSIN.
- 11.2 If SBC WISCONSIN ceases to have the right or authority to maintain its Structure, or any part thereof, to which CLEC has Attachments, SBC WISCONSIN shall:
- 11.2.1 Provide CLEC notice, as provided in Section 11.3, within ten (10) Business Days after SBC WISCONSIN has knowledge of such fact.
- 11.3 SBC WISCONSIN will provide CLEC with at least sixty (60) days written notice prior to:
- 11.3.1 Terminating a permit for an Attachment, terminating service to a CLEC Attachment, or removal of an Attachment in each case for a breach of the provisions of this Appendix,
 - 11.3.2 Any increase in the rates for Attachments to SBC WISCONSIN's Structure permitted by the terms of this Appendix, or
 - 11.3.3 Any modification to SBC WISCONSIN's Structure to which CLEC has an Attachment, other than a modification associated with routine maintenance or as a result of an emergency.

- 11.4 If CLEC surrenders its permit for any reason (including forfeiture under the terms of this Appendix), but fails to remove its Attachments from the Structure within sixty (60) days after the event requiring CLEC to so surrender such permit, SBC WISCONSIN shall remove CLEC's Attachments at CLEC's expense.
- 11.5 If SBC WISCONSIN discovers that CLEC has placed an Attachment on SBC WISCONSIN's Structure without a valid permit, SBC WISCONSIN shall notify CLEC of the existence of such unauthorized Attachment and CLEC shall pay to SBC WISCONSIN within ten (10) Business Days after receipt of such notice an unauthorized Attachment fee equal to five (5) times the annual attachment fee for an authorized Attachment.
- 11.6 Within the foregoing period, CLEC shall also apply for an Occupancy Permit for the unauthorized Attachment.
- 11.7 In addition, CLEC shall go through the process of any Make Ready Work that may be required for the unauthorized Attachment.
- 11.8 If CLEC fails to pay the unauthorized Attachment fee or apply for the required Occupancy Permit within the foregoing period, SBC WISCONSIN shall have the right to remove such unauthorized Attachment from SBC WISCONSIN's Structure at CLEC's expense.

12. INSPECTIONS

- 12.1 SBC WISCONSIN may make periodic inspections of any part of the Attachments of CLEC located on SBC WISCONSIN Structure. Except in cases involving safety, damage to Attachments or potential violations of the terms of this agreement, compliance inspections shall not be made more often than once every two (2) years. Where reasonably practicable to do so, SBC WISCONSIN shall provide prior written notice to CLEC of such inspections.
- 12.2 If CLEC's facilities are in compliance with this Appendix, there will be no charges incurred by CLEC for the periodic inspection. If CLEC's facilities are not in compliance with the Appendix, SBC WISCONSIN may charge CLEC for the costs (as defined in Section 252 (d) of the Act) of such inspections. The costs of periodic inspections will be paid for by those CLECs with 2% or greater of their Attachments in violation. The amount paid by the CLEC shall be the percentage that their violations bear to the total violations of all CLECs found during the inspection.

13. DAMAGE TO ATTACHMENTS

- 13.1 Both CLEC and SBC WISCONSIN will exercise precautions to avoid damaging the Attachments of the other or to any SBC WISCONSIN Structure to which CLEC obtains access hereunder. The Party damaging the Attachments of the other Party shall be responsible to such other Party therefore.

14. CHARGES

- 14.1 SBC WISCONSIN's charges for Structure provided hereunder shall be determined in compliance with the regulations to be established by the FCC pursuant to Section 224 of the ACT and applicable Commission rules, regulations and orders there under. Subject to applicable federal and state laws, rules, regulations and orders, SBC WISCONSIN shall have the right to change charges for Structure provided hereunder. Notwithstanding the foregoing, SBC WISCONSIN reserves the right to price on a case-by-case basis any extraordinary Attachment to Structure. An "Extraordinary Attachment" is any Attachment to Structure that is not typical of Attachments commonly made to Structure and that impacts the usability of the Structure in excess of a typical Attachment or that

presents greater than typical engineering, reliability or safety concerns to other attaching parties or users of the Structure. Payment in advance shall be required from CLEC for map preparation, field surveys, make-ready surveys and Make-Ready Work. If SBC WISCONSIN considers an Attachment to be an Extraordinary Attachment, SBC WISCONSIN will give CLEC notice thereof within a reasonable time, not to exceed forty-five (45) days of receiving CLEC's access request for the Attachment. CLEC shall be permitted to respond, and no charges may be assessed unless CLEC agrees to use the Attachment.

15. NONDISCRIMINATION

- 15.1 Except as otherwise permitted by Applicable Law, access to SBC WISCONSIN-owned or controlled Structure under this Appendix shall be provided to CLEC on a basis that is nondiscriminatory to that which SBC WISCONSIN provides its Structure to itself, its Affiliates, Customers, or any other person.

16. LOCATION OF ATTACHMENTS OF DUCTS AND CONDUITS

- 16.1 Upon request by CLEC, SBC WISCONSIN will permit the attachment of ducts or conduits owned by CLEC in SBC WISCONSIN manholes for the purpose of attaching to SBC WISCONSIN's conduit system. However, such interconnection in SBC WISCONSIN manholes will not be permitted where modification of SBC WISCONSIN's Structure to accommodate CLEC's request for interconnection is possible.
- 16.2 Except where required herein, requests by CLEC for Attachments in or on SBC WISCONSIN Structure with the Attachments of other attaching parties in or on SBC WISCONSIN Structure will be considered on a case-by-case basis and permitted or denied based on the applicable standards set forth in this Appendix for reasons of Insufficient Capacity, safety, reliability and engineering. SBC WISCONSIN will provide a written response to CLEC's request within forty-five (45) calendar days of SBC WISCONSIN's receipt of such request.
- 16.3 CLEC shall be responsible for the costs of any Make-Ready work required to accommodate any interconnection pursuant to this Section 16.

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18. STRUCTURE ACCESS COORDINATOR

- 18.1 Request for access to SBC WISCONSIN Structure shall be made through SBC WISCONSIN's Structure Access Coordinator, which shall be CLEC's single point of contact for all matters relating to CLEC's access to SBC WISCONSIN's Structure. The Structure Access Coordinator shall be responsible for processing requests for access to SBC WISCONSIN's Structure, administration of the process of delivery of access to SBC WISCONSIN's Structure and for all other matters relating to access to SBC WISCONSIN's Structure pursuant to guidelines as provided in the Exhibit to this Appendix. In the event of a conflict between the provisions of this Appendix and those of the Exhibit to this Appendix, the provisions of the Appendix shall prevail.

19. STATE REGULATION

- 19.1 The terms and conditions in this Appendix shall be modified through negotiations between the Parties to comply with the regulation of the state in which SBC WISCONSIN owns or controls Structure to which CLEC seeks access if such state meets the requirements of Section 224 (c) of the Act for regulating rates, terms and conditions for pole attachments and so certifies to the FCC

under Section 224 (c) of the Act and the applicable FCC rules pertaining thereto. Until the terms and conditions of this Appendix are renegotiated, the rules, regulations and orders of such state so certifying shall supersede any provisions herein inconsistent therewith.

20. ABANDONMENT, SALES, OR DISPOSITIONS

- 20.1 SBC WISCONSIN shall notify CLEC of the proposed abandonment, sale or other intended disposition of any Structure. In the event of a sale or other disposition of the conduit system or pole, SBC WISCONSIN shall condition the sale or other disposition to include and incorporate the rights granted to CLEC hereunder.